IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

OFFICIAL LIQUIDATOR'S REPORT DATED 4th DECEMBER, 2006
IN
COMPANY PETITION NO.7 OF 1971

In the matter of M/s. Glass Carboys & Pressedware Ltd. (in liqn.)

Esso Master Industries ..Petitioner.
And
1. Maharashtra State Financial Corporation.
2. UCO Bank .. Secured creditors.
And
Protochem Laboratories Pvt. Ltd. ..Proposed purchaser.
...
Dr. A.K. Barthakur for MSFC – Secured Creditor.
Mr. A.W. Ansari for the Purchaser.
Mr. P. Rama Rao, Official Liquidator present.
...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

22nd March, 2007.

P.C. :

1. The Official Liquidator has sought the following directions in his report :

"(a) Whether this Hon'ble Court would be pleased to direct MSFC to get the revaluation of the property done from a Government approved valuer for resale of the same?"

2. The report arises in the following circumstances :

On 15th November, 1995 the Official Liquidator submitted a report for the approval of the Consent Terms which were proposed to be entered into by MSFC and UCO Bank who are the secured creditors together with the purchaser of the immovable property in dispute. The immovable property is situated at MIDC Industrial Area at Ambernath and admeasures 23,693 sq. mtrs. On the report of the Official Liquidator an order was passed on 25th April, 1996 by which the Court approved the consent terms that were proposed between the secured creditors and the purchaser, M/s. Chemtech Engineering Services. The offer of the purchaser in the amount of Rs.101 lakhs was accepted. Of the amount, an amount of Rs.35.35 lacs was paid as Earnest Money Deposit leaving a balance of Rs.65.65 lacs. Clause (3) of the Consent Terms provided as follows :

> "Chemtech hereby agrees and undertakes to this Hon'ble Court to pay the balance amount of Rs.65.65 lakhs to MSFC within a period of 4 years from the date of sale of the assets confirmed by Hon'ble Court in favour of Chemtech and the Official Liquidator shall put Chemtech in possession of the assets within 10 days from the date of confirmation by MSFC/ UCO Bank that Chemtech has

> complied with necessary documents as required by MSFC and UCO Bank. Chemtech shall pay the balance purchase price of Rs.65.65 lakhs in eight equal half yearly installments together with interest @ 18.5% p.a. with quarterly rest. The first such installment shall become due for payment at the end of sixth month from the date of execution of documents and subsequent installments will be payable half yearly thereafter. All such payments shall be shared by MSFC and UCO Bank on pari passu basis to be appropriated first towards their all expenses on actual basis and then towards interest and principal as may be the practice of MSFC and UCO Bank."

3. Subsequently on a Company Application seeking to change the name of the purchaser (Company Application 477 of 1996) an order was passed on 4th July, 1996. As a result Protochem Laboratories Pvt. Limited came to be substituted as the purchaser.

4. Under clause 3 of the Consent Terms the purchaser had agreed to pay the balance of Rs.65.65 lacs within a period of four years from the date of the sale of the assets confirmed by the Court. The Official Liquidator was to place the purchaser in possession within ten days of the date of confirmation by the secured creditors that the purchaser had complied with the necessary documentation formalities. The balance was to be

paid in eight equal half yearly installments together with interest at the rate of 18.5% per annum. The first installment became due for payment at the end of six months from the date of the execution of the documents.

5. The material on the record shows that MSFC as the secured creditor had forwarded to the purchaser the draft of the agreement that was required to be executed on several occasions after joint meetings were held between the parties. On 24th December, 1998 MSFC, while referring to a joint meeting held on 10th December, 1998 called upon the purchaser, while forwarding the draft to have the draft engrossed and adjudicated for stamp duty. This was followed by MSFC's letter dated 20th April, 1999, 22nd December, 1999 and 31st May, 2001. In one of those letters dated 22nd December, 1999, MSFC recorded that the matter has been discussed with the Director of the purchaser and a detailed letter covering all the queries had been sent on 31st August, 1999 together with the final draft of the agreement for approval. Despite having been called upon by MSFC to execute the agreement, the purchaser manifestly failed to do so. Eventually a notice was issued by MSFC on 25th October, 2001 calling for the execution of

the documents within ten days. Finally on 10th June, 2002 MSFC forfeited the Earnest Money Deposit on the ground that the purchaser had failed to pay the balance of the consideration.

6. On behalf of the purchaser it has been submitted before the Court that there was no delay on his part; that a change in the name of the purchaser was approved and it was on account of the delay of the secured creditors or of the Official Liquidator that the execution of the documents did not materialize. The record of the case reveals a diametrically opposite situation for it is abundantly clear that in letter after letter MSFC had called upon the purchaser to execute the necessary documentation. It was only after the purchaser has failed to do so despite sufficient opportunity and with a final notice that MSFC proceeded to forfeit the deposit. If it is the case of the purchaser that if there was a delay on the part of the secured creditors or the Official Liquidator, a complaint would have been made to the Company Court, but evidently no such recourse was taken. On the contrary by a letter dated 20th March, 1999 the purchaser had sought an extension of the period for the repayment of the balance consideration from four years to six years and a modification in the rate of interest that was agreed

upon between the parties. The letter dated 20th March, 1999 of the purchaser clearly reveals that the purchaser was not in a position to abide by the conditions subject to which the Consent Terms were approved by the Court.

7. The correspondence between the parties would show that the purchaser had on 13th September, 2004 made a request for a reduction in the rate of interest. That was agreed upon by UCO Bank, one of the secured creditors which agreed to reduce the interest from 18.5% to 14%. On 26th September, 2005 UCO Bank once again addressed a letter calling for the execution of the documents and finally on 21st November, 2005, requested the Liquidator to move this Court for a fresh valuation of the properties having regard to the judgment of the Supreme Court in **Rajasthan Financial Corporation v. Official Liquidator**[1]. While adverting to the default on the part of the purchaser, UCO Bank noted that the prevailing rate in 1995 when the purchaser had submitted an offer of Rs.1.01 Crores was Rs.300/- per sq. mtr. The MIDC rate applicable to the industrial estate at Ambernath had in the meantime increased to Rs.1,000/- per sq. mtr. Taking into account

1 [2005] 128 Comp. Cases 387 (SC).

all the circumstances, the Liquidator was requested to present a report before the Court. The contention of the purchaser that there was no liability on the part of the purchaser to pay the consideration, until he was placed in possession is manifestly a misreading of Clause (3) of the Consent Terms. The Consent Terms record that the balance of the consideration amounting to Rs.65.65 lacs was to be paid to MSFC within a period of four years of the date of the sale as confirmed by this Court. The Consent Terms also record that the Liquidator was to place the purchaser in possession within a period of ten days from the confirmation by the secured creditors that the purchaser had complied with necessary documentation. The first installment was to become due for payment at the end of the six months from the date of the execution of the document. The purchaser in the present case has by his own conduct defaulted in complying with the requisitions of the secured creditors for the execution of the documentation. The purchaser then cannot be heard to say that the payment of the installments would stand deferred until the documentation was executed when the default in doing so was entirely due to the conduct of the purchaser. The rather disturbing aspect of the present case is that the learned advocate who

appears for the purchaser before the Court in these proceedings was at the material time assigned to work on the file of the purchaser in his official capacity as the Deputy Official Liquidator. In fact at page 371 of the affidavit that has been filed by the purchaser is a copy of the minutes of the meeting dated 7th October, 2003 signed by A.W. Ansari, Deputy Official Liquidator at the material time. It is not necessary for the Court to express any further view since it is a matter for every practicing advocate to determine whether a conflict of duty and interest is involved in his appearance in a particular proceeding before the Court. The prayer made in the report of the Official Liquidator would require to be accepted since it is only appropriate and proper, that a fresh valuation of the property be carried out so as to facilitate a further process of inviting bids for the sale of the property. Counsel appearing for the secured creditors has placed on the record a copy of MIDC's resolution dated 26th April, 2006 which shows that in the industrial area of Ambernath the rate has been determined at Rs.1,350/- per sq. mtr. The Official Liquidator shall in the circumstances carry out a fresh valuation of the property by a valuer from the panel of the Liquidator. This exercise shall be carried out expeditiously, within a period of four weeks from today

and a report shall be placed before the Court for seeking further directions for the invitation of fresh bids.